

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5884

DATE SUBMITTED: November 21, 2006

DATE OF NOTIFICATION: November 29, 2006

RESPONSE RECEIVED: December 22, 2006

SUPPLEMENT RECEIVED: January 8, 2007

EXPIRATION OF SOL: March 2011

COMPLAINANT:

Dave Olson

RESPONDENTS:

William T. Sali

Larry Grant

Paul Smith

Andy Hedden-Nicely

RELEVANT STATUTES:

2 U.S.C. § 441a-1(b)(1)(B)

11 C.F.R. § 400.20

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves an allegation that a candidate for the House of Representatives failed to receive Statements of Candidacy (FEC Form 2) from opposing candidates in the same race. Two of the opposing candidates, William T. Sali and Larry Grant, were already registered for the election prior to the complainant entering the race, while Paul Smith never exceeded the filing threshold that would have triggered the notice requirement. Andy Hedden-Nicely entered the race after the complainant and failed to provide any of his opponents a copy of his Form 2.

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Candidates intending to run for federal office are required to provide opposing candidates with a copy of their Form 2, but the notice requirements do not impose a continuing obligation on registered candidates to provide notice to candidates who subsequently enter a race. Thus, this Office recommends that the Commission find no reason to believe that there has been any violation of the Federal Election Campaign Act of 1971, as amended, ("the Act") as to William T. Sali, Larry Grant, and Paul Smith. Additionally, this Office recommends dismissing the matter as to Andy Hedden-Nicely.

II. FACTS

The complainant, Dave Olson, a candidate in the election for the House of Representatives seat in Idaho's 1st Congressional District, alleges that the respondents who are the other candidates in that election violated 11 C.F.R. § 400.20 by failing to provide him with a copy of their respective Statements of Candidacy (FEC Form 2) after Mr. Olson filed his FEC Form 2 with the Commission and mailed it to the opposing candidates.

Respondent William T. Sali claims that because he filed his FEC Form 2 seven months before the complainant filed his FEC Form 2 he was not required to share a copy of his FEC Form 2 with the complainant. Similarly, respondent Larry Grant, who filed his FEC Form 2 six months before the complainant filed his, asserts that "the only requirement under the law and regulations is that a later filed candidate must give notice to all earlier filed candidates." The treasurer for Paul Smith's committee noted that Mr. Smith received less than \$5,000 in contributions and spent less than \$5,000. Therefore, the complaint should not have applied to Mr. Smith.

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2 **III. ANALYSIS**

3 Candidates are required to send by facsimile machine or electronic mail their Form 2 to
4 all opposing candidates. *See* 11. C.F.R. 400.20(b)(2). This requirement does not impose a
5 continuing obligation on previously registered candidates to notify new opposing candidates in
6 the same election. *See* Explanation & Justification, *Notification and Reporting Requirements*,
7 68 Fed. Reg. 3979 (Jan. 27, 2003). Conversely, new candidates entering a race have an
8 obligation to provide copies of their Form 2 to their opponents already registered in the race,
9 notwithstanding whether or not they intend to expend any of their own funds that may exceed the
10 personal limits. *Id.*

11 In this case, the complainant became a candidate well after William T. Sali and Larry
12 Grant were registered as candidates. Therefore, these respondents did not have an obligation
13 under 11 C.F.R. § 400.20(b)(1) to provide the complainant with a copy of their respective
14 Form 2s. Additionally, Mr. Smith had not met the filing threshold pursuant to 2 U.S.C. § 431(2)
15 and, therefore, was not required to submit a Form 2 to his opposing candidates. On the other
16 hand, when Mr. Hedden-Nicely entered the race he was under an obligation pursuant to the
17 Commission's regulations to provide all of his registered opponents with a copy of his Form 2,
18 but failed to do so.

19 Accordingly, we recommend that the Commission find no reason to believe that William
20 T. Sali, Larry Grant, and Paul Smith violated the Act with respect to this matter. Although
21 Mr. Hedden-Nicely did not provide the complainant with a copy of his Form 2 when he entered
22 the race, Mr. Hedden-Nicely appears to have run a modest campaign, which only raised a little

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over \$20,000. Thus, it does not appear that the complainant was unfairly limited in soliciting contributions, since Mr. Hedden-Nicely did not indicate he intended to raise personal funds, nor did he raise personal funds, that would have triggered his opponents to accept contributions at the increased limits. Consequently, we recommend that the Commission exercise its prosecutorial discretion and dismiss the matter as to Mr. Hedden-Nicely. *See Heckler v. Chaney*, 470 U.S. 821 (1985).


IV. RECOMMENDATIONS

1. Find no reason to believe that William T. Sali, Larry Grant, and Paul Smith violated the Act with respect to this matter;
2. Dismiss the matter as to Andy Hedden-Nicely;
3. Approve the appropriate letters; and
4. Close the file.


Thomasenia P. Duncan
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7/9/07
Date

BY:



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